Supreme Court, U.S.
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No.

In the

Supreme Court of the United States

October Term 1999

Roy F. Sutton , Petitioner

v.

Ronald W. Sutton, Co-Trustee , individually and as personal representative of the Estate of Co-Trustee Loretta E. Sutton, Philip J. Perskie, Esq.; Goldenberg Mackler Sayegh & Mintz, a PC; Frederic L. Shenkman, Esq.; George L. Seltzer, Esq.; City of Atlantic City, by and through; Sidney Magen; Yvonne Preston; Sidney Trusty; ABC Commissioners; The Estate of Roy C. Sutton. Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE THIRD CIRCUIT COURT OF APPEALS

Roy F. Sutton
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Petitioner Pro Se

45pp

QUESTIONS PRESENTED

1. Whether in an estate civil RICO action would allowing Rooker/Feldman subject matter defense be a denial of equal justice under the law when the same defense may not be raised against a civil action brought by the United States under the same Title for the same criminal offenses ; or in the alternative , would 1964(c) be an implied , partial repeal of 1257(a) ?

2. Whether a property deprivation by private parties acting in concert with municipal officials and a state judge; Rooker/Feldman defense may be raised , for a soley legislative act of said municipality , by and through encroaching state court ordered action ?

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PETITION FOR WRIT OF CERTIORARI TO THE THIRD CIRCUIT COURT OF APPEALS

Roy F. Sutton respectfully petitions for a writ of certiorari to review the judgment of the Third Circuit Court of Appeals entered in this matter.

OPINIONS BELOW

The reported opinion of the District Court of New Jersey granting summary judgment to respondents dismissing complaint is found in the Appendix at 1a , (Sutton v. Sutton 71 F. Supp2d 383 [DNJ 1999]) as being entered on October 14, 1999. The unreported affirming opinion of the Third Circuit Court of Appeals was filed on May 18, 2000, Appendix 16a.

JURISDICTION

Jurisdiction of the District Court of New Jersey was predicated upon Title 28 U.S.C.A. Sections 1331 , and 1343(a)(3)(4). Jurisdiction of the Third Circuit Court of Appeals was based upon Title 28 U.S.C.A. Section 1291. This Supreme Court may grant petition under Title 28 U.S.C.A. Section 1254.

STATUTORY PROVISIONS INVOLVED

Revelant provisions are set forth in entirety in the Appendix , herein , commencing at 19a . Fifth Amendment , Title 18 U.S.C.A 1964 (a) (b) , (c) and (d) ; Title 42 U.S.C.A. 1983 ; Title 42 U.S.C.A. 1985(2) ; and Title 18 U.S.C.A 218 (Bribery) .

STATEMENT UNDER RULE 29.4(b)

Since the proceeding draws into question the constitutionality of Title 18 U.S.C.A. 1964(c) and Act of Congress affecting the public interest , and neither the United States nor any agency , officer , or employee thereof is a party , it is noted that 28 U.S.C.A 2403(a) may be applicable.

No Court of the United States has certified to the Attorney General the fact that the constitutionality of such enactment has been drawn into question.

STATEMENT OF THE CASE

Prior Background

Suit at bar flows out of long term , ongoing estate related fraud perpetrated through mail , wire fraud . A 1988 settlement , in Probate Court , attempted to resolve the fraudulent estate accounting . While it was petitioner's clear understanding that the settlement was to effect a lawful accounting , respondents used the settlement to shield their continuing misconduct as the agreement was subsequently construed , by both the Probate Court on Motion to Vacate and also the Law Division in rule allowed separate suit ; as depriving petitioner from any further standing in Estate matters. (Pet App 3a—5a) *In the Matter of the Estate of Roy C. Sutton* , 71383 and *Sutton v. Perskie & Nehmad , et al* , ATL-L-001228-93

Retrospectively , two previous attempts to gain federal jurisdiction were denied under *Rooker/Feldman* as being affirmed with cert. denial (Pet App 4a) *Sutton v. the Estate of Roy C. Sutton, et al.* , (DCNJ No.s 90-2090 and 91-2604) .

Subsequently in 1994 , Judge Previti , sitting probate and upon application of Attorney Shenkman for the Co-Trustees , lowered the the agreed sale price of $650,000 to $495,000 , as being done by way of injunction on petitioner and without his consent .

After being denied another injuction against petitioner in the Law Division matter and while still under appeal and against N.J. Appellate Rules and the Entire Controversy Doctrine , Attorney Shenkman and the Co-Trustees opened another suit in Chancery Div. , Atlantic County granting injunction preventing relitigation of previously determined issues *Sutton v. Sutton* ATL-C-11-94 and also awarded fees , costs against petitioner. (Pet App 5a)

Petitioner countered both injunctions by filing suit in the District Court of New Jersey , adding both Judges along with the Estate Attorney and the Co-Trustees as defendants. *Sutton v. Gibson , et al* , 95-5401 (Pet App., 6a) Judge Rodriguez dismissed suit under *Rooker/Feldman* and also cited the issue of comity that there should be state exhaustion before applying for federal relief . Suit was subsequently affirmed and Cert. was denied . (Pet App., 6a)

Digressively , District Court , in this instant Federal Suit , overlooked Attorney Shenkman's reopening of *Sutton v. Perskie & Nehmad , et al;* two years after case was closed in application for retaliatory fees and costs against petitioner for filing the Third Federal Suit against both Judges' injunctions. The Appellate Div. reversed his lower award of fees and costs. Essentially , New Jersey's Frivilous Lawsuit Statute could not be retaliatorily used for seeking federal redress.

A malpractice Suit was also concurrently filed in the Law Division against Attorney Seltzer and was dismissed under New Jersey's Entire Controversy Doctrine , ruling that suit should have been joined with the earlier Law Division , *Sutton v. Perskie & Nehmad , et al* , . Fees and costs were also allowed with dismissal and fees being affirmed. (*Sutton v. Seltzer* , A-458-95T2) (Pet App 7a) Fee sanctions were contrary to non-relaxable Rules, binding precedent . (CA3 App 104-128)

Subsequently and applicably , the joinder requirement of legal malpractice actions was reversed by the New Jersey Supreme Court in *Olds V. Donnelley* 150 N.J. 424 (1997) . The argued point was overlooked by the District Court in this Fourth Federal Suit. (CA3.A.,96)

In late 1996 , Judge Himmelberger , sitting Probate , approved a sale price of $225,00 , substantially down from the agreed price of $650,000 , and also ordered the transfer of petitioner's liquor license interest to the buyers (App 6a). The original Settlement Consent Decree omitted , excluded the liquor license as the Probate Courts (Judiciary) have no jurisdiction over soley legislative matters and as also delegated to the municipality by Law : N.J.S.A. 33:1-1 , *et seq.* . Additionally , the transfer of a liquor license interest requires consent of the license holder (Petitioner herein) .The argued points were overlooked by the District Court . (CA3 A. , 100—102)

Petitioner diligently followed Judge Rodriguez's "exhaustion ruling", against Seltzer's award of attorney fees and also the imposed consent decree terms and license transfer, by presenting the Lower State, Appellate and New Jersey Supreme Courts with "federal Claims", and in good faith compliance, also to this Supreme Court under Title 28 U.S.C.A. 1257. The concurrently filed petitions were denied: 97-1925 and 97-1926. Petitions were also made a matter of record in this instant suit, for issue and argument clarification when Attorney Shenkman and the Co-Trustees attempted to have petitioner jailed over the 4th of July Holiday, last year, for filing this instant Federal Suit as violating Judge Gibson's relitigation injunction. Upon Emergency Relief Application to the District Court, Judge Callahan of Cape May County Superior Court withdrew the Incarceration and Fine Order. (CA3 Ap., 104—149)

Current Background

Petitioner weighed distinct grounds for seeking federal jurisdiction and remedy. Primarily, state courts had previously either acquiesced or cooperated with estate fiduciaries and my own attorney in Estate related criminal acts or breaches of state court judgments. Secondarily, there should be federal civil remedy available to victims, if civil remedy was available to the Unites States Attorney General for the same misconduct. (Title 18 U.S.C.A. 1964(d), Pet A. 19a) Although there was concurrent jurisdiction with state courts and not exclusive jurisdictiion with federal courts, prior state court action could not exclude federal jurisdictiion; especially if the United States Attorney General was not excluded from a federal forum by prior state court involvement. Public entities, officials or employees were not above RICO reach or remedy. State Court rulings had been invalidated, voided under Title 18 U.S.C.A. 218 for Section 201 predicate convictions, as in Operation Greylord. Petitioner further considered that New Jersey had its own RICO Statutes principally based upon federal RICO Statutes, like most States; and weighed that there should be no conflict of interest with state courts by filing federal. All Circuits and this Supreme Court had exercised, supported Title 42 U.S.C.A. 1983 actions, against legislative actions in federal forums, and extending the *Rooker/Feldman* doctrine to court ordered liquor license transfer would seem to be a direct perversion of the spirit and intent of 1983 and also the Doctrine itself Also

weighed was the unenforceability of the state consent decree in the 1983 Count .

Thus , and after weighing arguments for , and those possibly against , a federal forum , petitioner filed in the U.S. District Court.

Instant suit pled past and newly accrued causes of action , since the Third Federal Suit . The RICO and RICO Conspiracy Counts identified , pled 19 separate schemes to defraud , under predicates of : Mail Fraud , Wire Fraud , Intangible Rights Mail Fraud , Obstruction of Justice ; and in the alternative , 1985(2) . (CA3 App. 11—64)

The Civil Rights Count against the City of Atlantic City , in concert with private parties, was based upon Title 42 U.S.C.A.1983 for colorable deprivation of the license. This Count was also pled , in the alternative , as a predicate RICO act of mail fraud. (Pet App 7a–8a)

The District Court missed that the argued 1985(2) statute could have been jurisdictionally invoked , as another Count , against the attempted state incarceration and fines . (CA3 Ap. , 156)

The affirmed District Court dismissal , under summary judgment , was predicated upon : Rooker/Feldman , Res Judicata and the Entire Controversy Doctrine. Mail Fraud predicates of filing brief , papers with the courts through the mails were rejected by way of dicta. (Pet App. , 12a) A 1983 Cause of Action against the private parties , acting in concert with the municipality for the license deprivation was also rejected by way of dicta , "defendants are not state actors" (Pet. App. 8a) and also "if the municipality and the licensing commissioners could be haled into federal court for their compliance with the directives of a lawful order of the state courts , it would do inestimable damage to our system of federalism and , ultimately , to the Rule of Law . " (Pet App. 14a)

On appeal , petitioner argued against District Court's points and also countering dicta : color commuting to private parties , mail fraud applying to brief filings , federalism embodying mutual respect and , judicially encroaching the legislature and adhering to a "Rule of Law " , quoting Milton Eisenhower . (CA3 Brf ., 5–14)

Respondents did not participate in this Third Circuit appeal ; and accordingly , the record before the Third Circuit was under 250 pages.

REASONS FOR GRANTING THE PETITION

Questions presented in this case regarding the applicability of two frequently invoked federal statutes : Civil RICO and Civil Rights are important and have resulted in circuit conflict , conflict in principle with constitutional guarantees of equal justice under the law , respecting Civil RICO ; and also , by allowing the extension of Rooker/Feldman to soley legislative actions , the Third Circuit has permitted , encouraged a perversion of the stated purpose of 1983 and has also ignored the authority of this Court's related rulings. Moreover , the decisions below foreclose victims' remedies , expressly guaranteed under statute and by this Court , and further encourage , foster conduct diametric to both statutes.

Along with victims , the federal government has an interest in private suits as public policy is to conserve limited resources available to federal prosecutors in fighting White Collar Crime; notwithstanding , prosecutors may not indict and try some cases which again leaves victims without remedy and contrary to public policy .

In view of the uncertainty respecting Rooker/Feldman , petitioner believes that it is appropriate for this Court to grant review of apparent diverse policies within the cited circuits , just as it has done in the past for waiveable defense : Klehr v. A.O. Smith Corp. 117 S.C.t 1984 (1997) and Rotella v. Wood 120 S. Ct. 107 (2000) .

1. **This Court should settle the issue of Rooker/Feldman applicability to Civil Rico actions , left unaddressed by TAFFLIN V. LEVITT causing conflict , in principle , among Circuits and this Court .**

Concurrent jurisdiction advances federal policies underlying Civil RICO Actions , Tafflin v. Levitt 493 U.S. 455 (1990) 467 ; yet , concurrent jurisdiction has served to exclude federal courts when state courts are involved .

The Third Circuit only allows a Civil RICO action when there is no impact on a related state court order , judgment .Tabas v. Tabas 47 F3d 1280 (CA3 1995) *en banc* (pobate related suit)

The Eleventh Circuit allows a federal Civil RICO Action in a probate matter Glickstein v. Sun Bank/Miami 922 F2d 666 (CA11 1991) *citing* Gunther v. Dinger 547 F. Supp. 25 (SDNY 1982) (estate enterprise) .

The existence of Estates presumes related state probate jurisdiction . As a legal entity , Estates may be "enterprises", United States v. Turkette 452 U.S. 576 (1981) . Tafflin at 467 cited "the broad remedial purpose of RICO as grounds favoring concurrent jurisdiction" Sedima S.P.R.L. v. IMREX 473 U.S. 479 (1985) . Using concurrent jurisdiction to oust federal courts from civil jurisdiction and to remove choice of jurisdiction from victims appear to be in conflict with the the remedial purpose of the statute and also encourages an Estate Enterprise free from federal civil remedy and condemns parties to the state system .

It is neither an unreasonable nor a hypthetical extension to weigh that there may be other legal entities touched by state court rulings , and even the state courts , where it would be preferable to litigate federally to counter prejudice , collusion , bribery .Again, Rooker/Feldman application would be able to frustrate remedy.

Additional confusion , conflict is starkly illuminated by the trial courts of other circuits ruling that "abstention" should be weighed , before permitting federal Civil RICO suit when there are also related state proceedings . Weighing "abstention" clearly denies a Rooker/Feldman defense . See: *DeMauro v. DeMauro* 115 F3d 94 (CA1 1997) ; *Macs's East Inc. v. Emergency Environmental Services , Inc.* 925 F.Supp 191 (SDNY 1996) ; *Cohen v. Reed* 869 F.Supp. 489 (EDNY 1994) ; *Clark v. Milam* 813 F.Supp. 431 (SD ,W. VA 1993) ; *Lawrence V. Cohn* 778 F. Supp 678 (SDNY 1991) ; *Grove Holding Corp. v. First Wisc. Natl. Bank* 803 F. Supp 1486 (ED , Wis 1992) Each of the previous cases cited *Colorado River Water Conservation District v. United States* 424 U.S. 800 1976).

This Court should resolve this apparent uncertainty ,unfairness as Estate Probate jurisdiction is a common , recurring state jurisdictional exercise ; notwithstanding , the Federal Government has significant interest in the lawful handling of estates as a source of taxation revenue . The Third Circuit has , in effect , placed all estates within the circuit beyond a 1964(c) remedy in a federal forum contrary to other circuits and trial courts . Moreover, ensuring the enforcement of federal statutes against state action should be a critically paramount and an important unflagging concern of this Court.

2. Denying federal jurisdiction to victims while the same is available to the United States , under the same criminal circumstances appears to deny Fifth Amendment guarantees of equal justice and this important issue should be settled by granting petition.

Fifth Amendment guarantees of equal justice are violated when Federal Law imposes an intentionally discriminatory classification .*See* Washington v. Davis 426 U.S. 229 (1976) and Bolling v. Sharpe 347 U. S. 497 (1954).

Section 1964(a) indicates that "the district courts **shall** have jurisdiction to prevent and restrain violations of section 1962 " . Under principles of statutory construction , "shall" is construed as having the compulsion of command .Section 1964(b) permits

a civil action by the United States Attorney General to counter RICO violations . Section 1964(d) declares that criminal convictions obtained by the United States for violations of RICO **shall** estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States . (Pet App , 20a-21a)

Illustratively , the United States has brought criminal RICO actions against public officials and attorneys in various Circuits: U.S. v Frega , 933 F. Supp 1536 (S.D. Cal , 1996) *mail fraud against attorney and judge for throwing PI cases ;* U.S. v. Brennan 685 F. Supp 883 (E.D.N.Y. 1988) *state judge fixing criminal cases* ; U.S. v. Angelili 660 F2d 23 (CA2 1981) *N.Y. City Civil Court RICO enterprise* ; U.S. v. Napoli 32 F3d 31 (CA2 1994) *attorney conviction mail fraud , bribery in PI trials* ; U.S. v. Grubb 11 F3d 426 (CA4 1993) *attorney defrauding bankruptcy court* ,and *as judge by attempting to influence a sheriff election , Office of Judge being run as enterprise* ; U.S. v. Yonan 800 F2d 164 (CA7 1986) and U.S. v. McDonnell 699 F. Supp. 1348 (N.D. Ill. 1988) *Operation Greylord , corruption in Cook County Judicial System , 84 convictions :13 judges 47 lawyers 18 police officers and 4 court officials* . The Selection , Analysis and Approval of Federal RICO Prosecutions , 65 Notre Dame Law Review 1035 (1990) , Paul R. Coffey , Dep. Chief ,Criminal Div. , USDOJ

"Intangible Rights Deprivations" were pled (CA3 App 28-32) , and also argued as applying to all three jurisdictional counts (CA3 Brf , p 7) . Under the Third Circuit's ruling , there would be no civil remedy for Title 18 U.S.C.A. 1346 predicates against state entities. See : *U.S. v. Brumley 116 F3d 728* (CA5 1997) *en banc* (Higginbotham C.J.) affirming a 1346 conviction against a State Worker's Compensation Board employee for a deprivation of "honest and impartial government" by taking payments from attorneys appearing before him ; and also rejecting the argument that "Congress failed to state its purpose with clarity demanded for federal incursions into state matters , at least those traveling on the commerce power" at 731 .

It logically and reasonably follows that RICO prosecutions involve some state court orders , judgments when state courts are being conducted as enterprises by litigants , attorneys and judges. If the Attorneys General and the United States District Courts exercise , or permit , jurisdiction for criminal violations , then it should logically and reasonably follow that victims should be able to exercise the same jurisdiction , or have the choice of jurisdictions.

Parenthetically and while not in a RICO context , the Seventh Circuit has somewhat muddied the *Rooker/Feldman* waters in : Centres , INC. V. Town of Brookfield , Wis. 148 F3d 699 (CA7 1998). Federal suit was allowed because "an alleged injury caused by a state court judgment must be distinguished from a federal claim alleging a prior injury that a state court failed to remedy " at 702. Centres suit challenged the actions of the defendants and did not allege an injury from the state court judgment itself , at 703. By analogy to a civil RICO suit , as long as a state court's ruling was omitted ; federal suit could be brought against other defendants. Centres reasoning may be problematic and may not be entirely , squarely to the point ; however , it does support the carved *Rooker/ Feldmen* exception to 1964(c) jurisdiction and also addressed the inability of a *Rooker/Feldman* jurisdictional dismissal to reach other affirmative defenses , unlike the Third Circuit did within this suit .

Permitting the United States to avoid the possible prejudice in state courts while condemning victims to the state system appears to be patently unfair , discriminatory. "Central both to the idea of the **Rule of Law** (*emphasis added*) and to our own Constitution's guarantee of equal protection is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance. " , Romer v. Evans 517 U.S. 620 (1996) (*cites, quotes therein omitted* , 633–634) . See: The Task of Maintaining Our Liberties 39 A.B.A.J. (1953) (*Robert H. Jackson , A.J.*) and The American Bar Center : A Testimony To Our Faith In The Rule Of Law 40 A.B.A.J. 19 (1954) (*Robert H. Jackson , A.J.*)

It is seasonably appropriate for this Court to speak. Is it constitutionally permissive to oust the District Courts from a 1964(c) action when state courts are involved? Courts , attorneys and litigants are entitled to know what the law is , to reduce miscalculation and to deter behavior . The Circuit uncertainty should be resolved as subject matter is not waiveable a defense , unlike Klehr , *infra*. . Different results in circuits create unfairness , generate contempt for authority , dignity of federal courts ; and further , erodes confidence in federal court integrity .

3. The implied , partial repeal of Title 28 U.S.C.A 1257(a) by Title 18 U.S.C.A. 1964 should be determined by granting this petition.

The Eleventh Circuit in Glickstein and the lower SDNY in Gunther (Pet. , p 7 , *herein*) have allowed civil RICO actions to proceed , in spite of state courts involvement . The Third Circuit in Tabas adheres to *Rooker/Feldman* (Pet. ,p 7) and the underlying 1257(a) jurisdiction of this Supreme Court , as does the Seventh Circuit : Centres , *infra* .

There appears to be an implied repeal of 1257(a) , respecting civil RICO Actions for the benefit of victim plaintiffs . This seems to be a valid conclusion in light of the of petitioner's Fifth Amendment argument with cites of the United States bringing , or exercising , District Court jurisdiction under Section 1963(b) (Pet. , p 8 , *herein*) and also in light of the command of 1964(a) . (Pet App. , 21)

While 1964(c) is a civil action , it is remedy to criminal acts and it would be prudent for this Court to resolve this "implied repeal" issue as promptly as possible so that other victims now , and in the future , may order their litigation strategy with fairness and choice of jurisdiction . In weighing petition grant , it may help this Court to remember that :

> "Times change , and Congress repeals some laws , adjusts others , and passes new legislation to meet the challenges of the day and of its own policy preferences. In most instances , congress is explicit about its intent to change

the law. In other cases, however, Congress is not so clear ; the repeal is not explicit. Although repeal by implication is disfavored .....it is not forbidden. " *U.S. v. Will* 449 U.S. 200 (1980) at 221-222 .

See also , The Notion of a Living Constitution , 54 Texas L.R. 693 (1976) (*William H. Rehnquist , C.J.*) at 793—795 .

It may very well be that Congress anticipated that Civil Rico would increase caseloads and felt as though there was a logical inference to 1964(c) that there would be no exceptions , exclusions granted to state courts , or their judgments , from being reviewed , set aside by federal district courts under RICO. If Congress did not increase funding to this Court , in anticipation of Civil RICO Litigation , then weight should favor repeal. Further weight for repeal may also be found in *Dick v. N.Y. Life Ins. Co.* 359 U.S. 437 (1959) , at 448 "The essential purpose of the Evarts Act (26 Stat. 826) was to enable the Supreme Court to discharge its indispensable functions in our federal system by relieving it of the duty of adjudication in cases that are important only to the litigants." (*emphasis added*) A 1964(c) suit coming from state courts under 1257(a) may only have parochial interest. In any event , it is seasonable for this Court to now determine congressional intent and to give the public , attorneys and courts fair notice , instead of permitting a jurisdictional vagueness to exist .

4. Dismissing 1983 Count for lack of state action and also applying Rooker/Feldman to legislative action conflicts with decisions of this Supreme Court.

A 1983 cause of action was pled against city commissioners acting in concert with private parties (CA3 App. p 34) . The same cause of action was also pled in the alternative to be predicate acts of mail fraud under 1341 and 1346 .

A 1985(2) cause of action was argued for the attempted retaliatory jailing (CA3 App 156) or in the alternative a 1512 "Obstruction of Justice" predicate act.

The affirmed reasoning indicates that the private parties to the 1983 Count were not state actors ; and that the city commissioners were acting under direction of a lawful court order ; and were thus , apparently , insulated for lack of color and under Rooker/Feldman . (Pet App, 12–14) .

The affirmance squarely conflicts with *Lugar v. Edmondson Oil Co.* 457 U.S. 922 (1982) , *U.S. v. Price* 383 U.S. 787 (1966) , *Tower v. Glover* 467 U.S. 914 (1984) , "Private parties jointly engaged with state actors are acting under color of law for 1983 purposes and will support a 1983 suit" . *Lugar* at 935 . *Price* explicitly ruled for private actor culpability , as state action , when jointly engaged .

A reasonably drawn inference , under this ruling , is that all private parties , acting jointly , are insulated from 1983 suits ; and that by judicial encroachment , both the Executive and Legislative Branches of State Government may evade lower federal jurisdiction , along with State judicial actions.

The Third Circuit ruling is a radical departure from the intent of the statute and the authority of this Court's rulings. This Court has also cited 1983's legislative history as "plainly establishing that it was enacted to provide a federal forum for litigants..... who might have had an inadequate opportunity to protect their constitutional rights in state courts : , Monroe v. Pape 365 U.S. 167 (1961) at 180 .

> "The United States courts are further above mere local influence than the county courts; their judges can act with more independence ; .....their sympathies are not so nearly identified with those of the vicinage.....We believe we can trust our United States courts, and we propose to do so.....(*Congress*) It was concerned that state instrumentalities could not protect those rights, it realized that state officers might, in fact , be antipathetic to the vindication of those rights; and it believed that these failings extended to the state courts..."
> Monroe , 172—187 .

The Third Circuit has now failed to vindicate those pled , argued federal rights guaranteed under Constitution , by Statute and this Court . This Court has only applied Rooker/Feldman to state court judgments or orders. The Third Circuit's extension seems unfair ; creates uncertainty and should be addressed by this Court.

5. The decision below is erroneous , certworthy raising issues requiring this Court's intervention.

Suit is representative of diligent , good faith efforts to correct misconduct ; by state actors and private parties , within the jurisdiction of the state court system . Circumstances reflect a perversion of both federal and state laws . Two remedial federal statutes were pled in federal forum. Other than mail fraud not applying to the mailing of briefs , neither the courts nor respondents found fault or challenged the RICO Counts .

In the RICO context , it may be prudent to reiterate petitioner's reasons for selecting RICO in a federal forum by citing: *RICO Amendment Act of 1991, H.R. 1717* "Civil RICO is the consumer's best remedy against massive white-collar crime and other forms of sophisticated criminal behavior" , at p. 5 ; "Balanced against the scant evidence of extorted settlements is the need for adequate remedies for victims of white-collar crime.....60 percent of Judges , 58 percent of defense lawyers and 51 percent of Corporate counsel believe that individuals and small business are less likely to get a fair shake in the civil courts" at p. 12 ; and "White-Collar Crime may be the most costly social problem of our time." at p. 2 .

Carving a 1341 & 1346 mail fraud exception for mailings of briefs and other papers by attorneys , other parties may be inconsistent with , or contrary to , principles in : *Reves v. Ernst Young* 507 U.S. 170 (1993) . Both mail fraud statutes are silent as to the recipient determining application of the statutes. See , *Reflections on Reves v. Ernst & Young: Its meaning and impact on substantive, accessory , aiding abetting and conspiracy liability under RICO* , 33 American Criminal L.R. 1345 (1996) (*G. Robert Blakey*) and also

Attorney Liability Under RICO , Section 1962(c) After Reves v. Ernst & Young : 61 Univ. of Chicago L.R. 1153 (1994) (*Jeffrey N. Shapiro*)

The Third circuit's ruling has nullified the intent of both the RICO and 1983 causes of action and has placed the Third Circuit in the dubious position of actually protecting RICO violators from victims , soley because they were able to obtain either the knowing or unwitting aid of a state court . In effect , the ruling creates a license for attorneys and their joint tortfeasors to violate RICO, without fear of victim federal remedy and with the strongest of possibilities that there would be an incentive to plead out to lesser criminal charges to limit civil liability. Essentially , the Third Circuit discourages private rights of action . See: *Agency Holding Corp. v. Malley-Duff & Associates , inc.* 483 U.S. 143 (1987) , at 151 & concurring opinion , *J. Scalia* .

Insult to injury , The Third Circuit has ignored its own ruling, by dismissinig on the merits (Res Judicata and Entire Controversy Doctrine) and thereby denying petitioner any further remedy , unless granted by this Court. Denying subject matter and then accepting subject matter , to insert finality , conflict with the Seventh Circuit and strongly evidences hypocrisy and prejudice. See : *Garry v. Geils* 82 F3d 1362 (CA7 1996) at 1365 , *cites ommitted* .

CONCLUSION

In these circumstances : victim intolerability , unequal justice under the Law , repeal implications , encroachment defense , mail fraud exclusion and Rules of Law ; decision below should not stand and should be reviewed by this Court.

Very respectfully submitted

Roy F. Sutton
210 Upland Ave.
Absecon , N.J. 08201
609 652 8313

TITLE 28 U.S.C.A. 1746 JURAT

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 8-3-07

Roy F. Sutton , Petitioner

SUTTON v. SUTTON , 71 F. Supp. 2d 383 (D. N.J. 1999)

ROY F. SUTTON, Plaintiff.

v.

RONALD W. SUTTON , individually and as personal representative of the estate of Estate of Co-Trustee Loretta E. Sutton , et al., Defendants

CIVIL ACTION N0. 99-573 (JBS)

United States District Court

D. New Jersey

Oct. 13, 1999

OPINION

SIMANDLE, District Judge.

The instant case arises from a series of transactions and various lawsuits dating back to 1985 and it requires this court to explore the the limitations upon its ability to entertain newly pleaded federal claims relating to a seemingly endless series of matters previously litigated in the state courts. As discussed herein, all of the claims and issues within thisw have been, or could have been, decided in the three previousl federal lawsuits and other state court actions that this estate has engendered. Pro se plaintiff Roy F. Sutton filed this lawsuit against Ronald W. Sutton individually and as personal representative of the Estate of Co-Trustee Loretta E. Sutton; Philip J. Perskie , Esq. ; Goldenberg, Mackler, Sayegh & Mintz a PC; Frederic L. Shenkman, Esq; George L. Seltzer , Esq; City of Atlantic City, by and through Sidney Magen, Yvonne Preston, Sidney Trusty (the Alcoholic Beverage Commissioners); and the Estate of Roy C. Sutton (the Estate) . According to the Complaint , Filed February 8, 1999,

* Defendants Ronald and Loretta Sutton (the Co-Trustees), Perskie, goldenberg, Shenkman, and Seltzer, conducted the affairs of the Estate as a racketeering enterprise that has violated the Racketeer Influenced and Corrupt Organization Act (RICO), 18 U.S.C. 1961 , *et seq.*;

* the Co-Trustees, together with Perskie, Goldenberg, Shenkman and Seltzer conspired "to maintain control of the Estate, through a pattern of racketeering activity such as mail fraud and retaliation against a victim, within the meaning of" 18 U.S.C. 1962(d) , ;

* defendants City of Atlantic City, the ABC Commissioners, Ron Sutton, the Estate of Co-Trustee Loretta Sutton, Goldenberg and Shenkman are liable under 42 U.S.C. 1983 for acting under color of state law to deprive him of his property right in a liquor license (or, in the alternative, that the allegations underlying this claim are predicate acts of mail fraud),;

* Ron Sutton and Seltzer breached their fiduyciary duties to plaintiff under state law:

* The estate breached its fiduciary duty to plaintiff in 1974 when Roy C. Sutton plurchased land for the benefit and use of his corporation but put it soley in Roy C. Sutton's name; and

* the Estate was unjustly enriched by plaintiff's services without reasonable pay.

(See Complaint , Cts I-VI) Plaintiff seeks an accounting of, and constructive trust for, the Estate; imposition of equitable liens; indemnification of losses payable from the Estate due to defendants' conduct; inheritance disbursement under Roy C. Sutton's will, trebled; pay for services; a return of a sanction against plaintiff in another case; and other damages.

Now before this Court are motions filed by each of the defendants to dismiss the plaintiff's complaint. Because the parties attached exhibits to the moving papers, and because all parties and the Court rely upon these documents, the motions will be converted for summary judgment so that the exhibits may be considered. Defendants argue that plaintiff's claims are barred by res judicata and collateral estoppel, that the complaint should be dismissed due to the *Rooker/Feldman* doctrine and that plaintiff has failed to state a claim under 1983 because none of the defendants acted under color of state law. For reasons stated herein, this Court agrees with defendants, and this case will be dismissed.

I. *BACKROUND*[1]

Roy C. Sutton ("Decedent") owned a piece of real estate in atlantic City and a liquor license, in which he gave plaintiff a 6.7% interest. Decedent also owned an abutting tract of land, known as Hahn Place which was used as a parking lot. In early 1985, the Decedent purchased with some of his own money and with other money that he intended as gifts for his children, an additional abutting tract of land to be used as a parking lot' each of his children had a 1/6 interest in this land (hereinafter referred to as the "Parking Lot"). When the Decedent died later athat year 93.3% of the Melody Lounge and the liquor license passed to the Decedent's wife, Loretta, 6.7 % of the Melody Lounge and the liquor license passed to plaintiff, 100% of Hahn Place passed to Loretta, and each of the six children still owned a 1/6 interest in the Parking Lot.

Most of Decedent's children believed that their interest in the Parking Lot should be treated as partial satisfaction of bequests made to them in the will, but plaintiff disagreed. After an informal agreement failed, a formal acdcou8nting application was filed with Bankruptcy Court. The estate and its Co-Trustees were represented by Philip J. Perskie. Plaintiff through his attorney George Seltzer (now a judge), filed an exception. A consent order dated May 6, 1988, placed on the record by the parties, settled the matter: instead of the $6,400 to which the informal agreement would have entitled him, plaintiff would receive $75,000 "without setoff" in addition to his interest in the Parking Lot and his 6.7% interest in Sy Cur , Inc., the corporation which owned the Melody Lounge and its liquor license) in exhcange for a release of any further claim against the estate. The consent order also noted that the six children would sell the Parking Lot for $650.000.

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[1] a condensed version of the relevant factual background follows. A much more thorough and complete history leading up to the filing of the instant lawsuit can be found in the Certification of Frederic L. Shenkman and the 72 supporting exhibits. With limited exceptions noted in his brief, mostly limited to characterizations of the effects of certain actions, plaintiff does not contest that the certification and exhibits accurately delineate the relevant history of the parties. This Court will also provide more detail in the discussion section of this Opinion about the previous lawsuits filed between the parties when it is appropriate to the discussion.

Sometime thereafter, plaintiff came to belive that the defendants engaged in a conspiracy to violate tax laws; he wrote the Atlantic County prosecutor, the New Jersey Attorney General, and others about it to no avail. He then went to the Probate Court to vacate the consent order, but that was denied, as was reconsideration. Plaintiff did not take an appeal. Instead, on May 29, 1990, he filed a lawsuit in federal court ("First Federal Suit") against Perskie, Perskie's law firm, the Estate's accountants, the Estate's attorney, the Estate and the Co-Trustees, alleging violations of tax laws and plaintiff's First Amendment rights. Judge Joseph H. Rodriguez granted a motion to dismiss, holding that the *Rooker/Feldman* doctrine, discussed *infra*, bars review of the state court's approval of the settlement and that the First Amendment claim is inextricably intertwined with the validity of the consent order. *Sutton v. the Estate of Roy C. Sutton,* No. 90-2090 (DNJ., Aug. 6, 1990. The Third Circuit affirmed , *Sutton v. Estate of Roy C. Sutton,* No. 90-5772 (3rd Cir Jan 25 , 1991), rehearing en banc was denied, *id.* (3rd Cir. Feb. 26, 1991), and the U.S. Supreme Court denied certiorari, *Sutton v. the Estate of Roy C. Sutton,* 500 U.S. 944, 111 S.Ct. 2243, 114 L.Ed.2ndd 484 (1991).

Unsatisfied, on August 11, 1991, plaintiff filed another suit in federal court before Judge Rodriguez (the Second Federal Suit"), based on the same facts but with two judges, the New Jersey Attorney General, and the Atlantic County Prosecutor as additional defendants, and with added claims based on 1983 and RICO. Judege Rodriguez dismissed the matter *sua sponte* for lack of subject matter jurisdiction noting that this was just an attempt to attain federal jurisdiction in what was essentially relitigation of the adjudicated state court action; merely alleging that federal questions are involved, he said, is insufficient to convert a state law claim. Sutton v. the Estate of Roy C. Sutton, No. 91-2604, Mem. order at 4 (DNJ April 30, 1992). The Third Circuit affirmed, *Sutton v. Estate of Roy C. Sutton* 975 F2d (3rd Cir. 1992), and the Supreme Court denied certiorari, *Sutton v. the Estate of Roy C. Sutton*, 507 U.S. 1038, 113 S.Ct. 823, 121 L.Ed. 694 (1992).

Still unsatisfied, plaintiff filed another suit in the Superior Court of New Jersey, Law Division; Perskie and the Co-Trustees were named in the suit ("Law Division Action"). Sutton v. Perskie & Nehmad Law Firm, No. ATL-L-001228-93 (NJ Super. Ct. Law Div. filed March 16, 1993). Judge Williams dismissed much of the lawsuit on a motion to dismiss, including counts for unlawful accounting, fraudulent contracting/ retaliatory firing, malicious loss of prospective economic advantage , waste, breach of fiduciary duty, malicious interference with a prospective economic advantage, quantum meruit, and corporate opportunity. *id.* NJ Super. Ct. Law Div. May 10, 1993 (order denying change of venue and dismissing certain counts of complaint with prejudice). Almost a year later, Judge Williams granted summary judgment for the defendants on the remaining claims, including wrongful settlement/conversion(afgainst Perskie and the Co-Trustees) and defamation. *id.* (NJ Super. Ct. Law Div. March 15, 1994) (order granting defendants summary judgment). These decisions were upheld on appeal. *Sutton v. Perskie & Nehmad*, No. A-5190-93T3, slip op. (NJ Super. Ct. March 13, 1995).

Meanwhile, plaintiff filed a Notice of Motion to Enforce Litigants Rights in the Probate Matter, assigned to Judge Previti, who determined after a hearing that plaintiff had no further interest in the estate after he was paid the $75,000. *In The Matter of the Estate of Roy C. Sutton,* No. 71383 (NJ Super. Ct. Ch. Div. Dec. 19, 1993) (order denying motion to enforce litigant's rights). the Appellate Div. affirmed, *In the Matter of the Estate of Roy C. Sutton* No. 2564-93T1 (NJ Sper. Ct. App. Div. Oct 27, 1994), and the New Jersey Supreme Court denied certification, *In the Matter of the Estate of Roy C. Sutton* No. C-441 (NJ, Nan 10, 1995).

Defendants in this case attempted to amend their answer and counterclaim the Law Div. action to enjoin and restrain plaintiff from litigating matters that had already been litigated or could have been litigated in the earlier actions. Judge Williams denied such leave to amend, and defendants thereafter filed a Chancery Action to effectuate the same relief. *Sutton v. Sutton* ATL-C-11-94 (NJ Super Ct. Ch. Div. filed Feb. 9, 1994). Plaintiff here, (defendant in the Chancery action) filed counterclaims, alleging wrongful denial of access to the courts, wrongful conversion and breach of fiduciary duty. *id.* (NJ Super. Ct. Ch. Div filed March 1, 1994) Judge Gibson

granted relief and entered the order enjoining plaintiff from litigating matters that had, or could have been, litigated in the earlier matters, and denying Roy F. Sutton's counterclaim with prejudice on the merits. *id.* (NJ Super. Ct. Ch.. Div. Sept 28, 1994). Judge Gibson ordered plaintiff to pay the other side's fees. *id.* (NJ Super Ct. Ch. Div Nov. 4, 1994).

No appeal was taken from the Chancery action dec ision, but plaintiff filed yet another federal lawsuit on March 20, 1995 before Judge Rodriguez (the "Third Federal Suit"). *Sutton v. Gibson,* No. 95-1023 (DNJ filed March 20, 1995). This time , Judge Previti Judge Gibson and Frederic Shenkman were included as defendants. Judge Rodriguez dismissed the case sua sponte *id.* (DNJ , April 20, 1995) (order dismissing plaintiff's case, denying plaintiff's request for injunctive relief, and denying as moot motions to dismiss the case). The Third Circuit affirmed, *Sutton v. Gibson* No. 95-5401 (3rd Cir. Jan. 5, 1996) and the Supreme Court denied on certiorari *Sutton v. Gibson* No. 95-1545 (U.S. May 15, 1996).

After each of the lawsuits had been filed and dismissed, a conflict arose as to the purchase price for the Melody Lounge and the abutting land that decedents' children had agreed upon in the Consent Order in the Probate Court. Unable to close a deal at the price in the Consent Order, Judge Previti reduced, and then further reduced, the price of the land. Eventually, there was an offer on the land, and the sale was approved and finalized on Sept 27, 1996. *In the Matter of Estate of Roy C. Sutton,* No. 71383 (NJ Super. Ct. Ch. Div. Sept 27, 1996). The Estate filed an application for approval of disbursements, including an authorization to release certain moneys (approx. $23,000) to plaintiff. Plaintiff opposed the application, but Judge Himmelberger (of the Probate Court) finding that plaintiff was objecting simply for the sake of objecting, approved the disbursements. *id.* (NJ Super. Ct. Ch. Div May 16, 1997). Plaintiff's view was not vindicated upon appeal.

On Feb. 16, 1995, plaintiff also filed a lawsuit against George Seltzer based on malpractice, alleging that Seltzer was negligent in investigating, condujcting litigation, and settling his cas in the Probate Court. *Sutton v. Seltzer* No. ATL-L-000543-95 (NJ Super Ct. Ch. Div. filed Feb 16, 1995). He contended that Seltzer wrongfully

signed the Consent Order and breached his fiduciary duty to plaintiff. The Superior Court of New Jersey dismissed the Complaint with prejudice based on the Entire Controversy Doctrine, finding that plaintiff could have adjudicated claims against Seltzer in the Law Division action, in which plaintiff had accused the estate's attorneys accoiuntants and personal representatives of knowingly concealing the source of the $75,000 payment in the Consent Order. *id.* (NJ Super. Ct. Ch. Div. July 28, 1995). The Superior Court found that the summary judgment in the Law Division case barred the malpractice claim, and the Appellate Division affirmed. *Sutton v. Seltzer* No. A-458-95T2 slip op. at 4 (NJ Super. Ct. App Div June 14, 1996). An application for certification to the New Jersey Supreme Court was denied. The Superior Court awarded fees to George Seltzer and denied an application to vacate the judgment allowing fees and sanctions. *Sutton v. Seltzer* No GLO-L-672-95 (NJ Super. Law Div. Oct 30, 1995, June 25, 1996 and Feb 7, 1997). The Appellate Division affirmed the award of fees and sanctions, *Sutton v. Seltzer* No. A-4760-96T1, (NJ Super. Ct. App. Div Jan 13, 1998), and the New Jersey Supreme Court denied certification, *Sutton v. Seltzer*, No. C-874 (NJ Mar. 24, 1998).

Finally, on Feb. 8 , 1999, plaintiff filed his fourth federal lawsuit, the instant case. The list of defendants includes Co-Trustee Ronald Sutton, the estate of Co-Trustee Loretta Su7tton, the Estate, Perskie, and Frederic Shenkman, all of whom were parties to the to the aforementioned lawsuits which plaintiff had filed previously. The defendants also include the Goldenberg firm (where Frederic Shenkman wasw a partner), the City of Atlantic City and its municipal commissioners (who approved the liquor license transfer that went with the sale of the Melody Lounge and its abutting land), and George Seltzer. According to the complaint, plaintiff alleges counts against the Co-Trustees, Perskie, Goldenberg, Shenkmand, Seltzer for RICO and RICO conspiracy (through inheritence set-offs, securities concealment, retaliatory firing, fraudulent settlement, wrongful death conversion, corporate stock conversion, real property conversion, retaliatory discharge and a host of mail fraud violations which occurred when defendants filed papers in the various court cases filled with alleged lies; against the City of Atlantic City, the ABC Commissioners, the Co-trustees, Goldenberg, and Shenkman under 42 U.S.C. 1983 (for denying plaintiff his property interest in

his liquor license); against Ronald Sutton and George Seltzer for breach of fiduciary duty; and against the estate for corporate opportunity and unjust enrichment.

Each defendant has moved to dismiss the case. Because they attached exhibits to their moving papers to which plaintiff has responded and upon which this Court will rely, their motions will be converted into motions for summary judgment pursuant . Defendants argue that plaintiff's claims are barred because of res judicata and collateral estoppel, because of the *Rooker/Feldman* Doctrine and because the defendants are not state actors. This Court will now address these arguments.

II. *DISCUSSION*

Plaintiff alleges three federal causes of action, upon which this Court's jurisdiction is based, against each of the defendants with the exception of the Estate, against which only state causes of action are alleged: RICO , RICO conspiracy, and 1983 (except against defendant Seltzer). Defendants argue that these claims should be dismissed as a result of res judicata, collateral estoppel, and the entire controversy doctrine, because of the *Rooker/Feldman* doctrine , and because each defendant is not a state actor. This Court finds that res judicata, the entire controversy doctrine and the *Rooker/ Feldman* doctrine bar all of plaintiff's current claims. As the case will be dismissed on these grounds, this Court need not discuss defendants' argument that the civil rights claim should be dismissed because the defendants are not state actors.

A. *Legal Theories*

1. *Res Judicata and the Entire Controversy doctrine*

Defendants argue that the claims are barred by res judicata, also known as claim preclusion. In determining whether claims in the instant matter are barred by res judicata, this Court looks to the well-settled rule recited in Paramount Aviation Corp. v. Augusta 178 F3d 132 ,135-136 (3rd Cir 1999), that "federal courts should apply the general rule that the preclusive effect of a judgment is determined by the preclusion law of the issuing court..." Because

the instant case involves previous decisions of both federal and state court, this Court must look to both federal and New Jersey preclusion doctrines. The two are nearly identical.

[1] Under federal law, res judicata prohibits a party from reopening and relitigating issues that were or could have been decided in a previous case involving the same parties arising out of the same transaction. There are three elements to claim preclusion: (1) a final judgment on the merits in a prior suit involving (2) the same claim and (3) the same parties or their privies." *EEOC v. U.S. Steel Corp.* 921 F2d 489, 493 (3rd Cir 1990). *See also Federated Dep't Stores v. Moite,* 452 U.S. 394, 398 , 101 S.Ct. 2424, 69 L.Ed.2nd 103 (1981). Res judicata precludes claims that were determined in the earlier action as well as ones that could have been determined. *Angel v. Bullington,* 330 U.S. 183, 192-193, 67 S.Ct. 657, 91 L.Ed 832 (1947).

[2] As plaintiff has pointed out, with respect to the three prior federal law suits, federal preclusion law does not bar plaintiff's current action Each of the three previous federal lawsuits was dismissed for lack of subject matter jurisdiction, and under Rule 41(b), Federal Rules of Civil Procedure, a dismissal for lack of subject matter jurisdiction is not an adjudication upon the merits. Therefore, the fact that previous federal lawsuits against similar defendants on similar issues were filed by the plaintiff and dismissed by Judge Rodriguez for lack of subject matter jurisdiction does not preclude the instant lawsuit as a matter of res judicata or collateral estoppel.

[3] However, many of plaintiff's claims, as discussed below, are barred by state res judicata, among other reasons, arising from the matters litigated in the state courts. New Jersey courts apply essentially the same analysis for res judicata :"(1) the judgment in the prior action must be valid, final, anmd on the merits; (2) the parties in the later action must be identical to or in privity with those in the prior action; and (3) the claim in the later action must grow out of the same transaction or occurrence as the claim in the earlier one." *Watkins v. Resorts Int'l Hotel and Casino, Inc.,* 124 N.J. 398, 412 591 A2d 592 (1991) (quoting *Moite* 452 U.S. at 398, 101 S.Ct. 2424 as consistent with New Jersey Law.) A cause of action "that has been finally determined on the merits by a tribunal having jurisdiction cannot be relitigated by those parties or their privies in a new

proceeding." *Valesques v. Franz,* 123 N.J. 498, 505, 589 A2d 143 (1991). Thus , if a claim could have been presented in the first action (because the court would have had jurisdiction), it will be precluded in the second action, *Watkins,* 124 N.J. at 413.

[4] In addition to traditional res judicata, New Jersey has another claim preclusion theory which, under *Paramount Aviation,* this Court must apply: the entire controversy doctrine, which is unique to New Jersey,"encoppasses traditional concepts of claims joinder as well as party joinder..." *Fornarotto v. American Waterworks Co., Inc.,* 144 F3d 276, 278 (3rd Cir 1998).

> "The fundamental principle behind the inclusion policy of the entire controversy doctrine is that the adjudication of a legal controversy should occur in one litigation in one court; accordingly, all parties involved in a litigation should at the very least present in that proceeding all of their claims and defenses that are related to the underlying controversy"

id. (quoting *Venuto v. Witco Corp.,* 117 F3d 754, 761 (3rd Cir 1997). As explained by the New Jersey Supreme Court, the main test under the entire controversy doctrine is whether "the claims against the different parties ar5ise from related facts or the same transaction or series of transactions. It is the core set of facts that provides the link between distinct claims against the same or different parties and triggers the requirement that they be determined in one proceeding." *Di Trolio v., Ajntiles,* 142 N.J. 253, 267-268 (1995) (internal citations omitted). Thus, though the parties and the claims in the second suit may be different than those in the first suit, the second suit may nonetheless be barred because it concerns the series of transactions already at issue in the first suit. It is through this formula, which is broader than traditional res judicata, that the New Jersey Legislature, in adopting the doctrine through Rule 4:30A of the New Jersey Rules of Civil Procedure, seek to promote "judicioal economy and efficiency by avoiding fragmented, multiple and duplicative litigation." *Fornarotto,* 144 F3d at 278 (citing *Venuto,* 117 F3d at 761).

2. *The Rooker-Feldman Doctrine*

[5] Under 28 U.S.C. 1257, final judgments or decrees entered by the highest court of a state may only be reviewed by the United States Supreme Court via a writ of certiorari. Under the *Rooker/Feldman* doctrine, gleaned from *Rooker v. Fidelity Trust Co.*, 263 U.S 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed2nd 206 (1983), Lower federal courts cannot "sit in direct review of th decisions of a state tribunal." *Whiteford v. Reed* 155 F3d 671, 673 (3rd Cir. 1998) (quoting *Gulla v. north Strabane Twp.*, 146 F3d 168, 170(3rd Cir. , 1998). If the relief sought in a federal action (not before the Supreme Court would effectively reverse the state decision or void its ruling... the District Court has no subject matter jurisdiction to hear the suit." *Whiteford* 155 F3d at 674 (quoting *FOCUS v Allegheny County Court of Common Pleas*, 75 F3d 834, 840 (3rd Cir 1996). The doctrine applies to the decisions of lower state courts, *Whiteford*, 155 F3d at 674, so long as the state adjudicative action reached the merits of a plaintiff's claims. *Gulla* 146 F3d at 172-173.

B. *Application of Theories to the Instant Case*

[6] As explained above, none of Judge Rodriguez's three previous dismissals of the federal actions which plaintiff filed bar the instant action as a matter of res judicata or collateral estoppel. The entire controversy doctrine and the *Rooker-Feldman* doctrine speak only to effect of prior state judgments, and thus this Court does not lack subject matter jurisdiction over this law as a result of the previous federal actions under those theories either. However, even though this Court has jurisdiction to determine RICO claims and Civil Rights Act claims, the previous state actions do bar the instant action, including these federal claims, as a result of res judicata, the entire controversy doctrine, and the*Rooker/Feldman* doctrine.

Though the instant law suit adds additional parties (Goldenberg and the City of Atlantic City and its ABC Commissioners), and purportedly adds additional claims of RICO, RICO Conspiracy, 42 U.S.C. 1983, and state claims, this Court finds that it does nothing more than rehash claims that were or could have been made in any of the previous state lawsuits.

Although plaintiff has characterized his lawsuit as based on federal claims, including RICO, 18 U.S.C. 1964(c), and 42 U.S.C. 1983, over which both federal and state courts have original jurisdiction, he is attempting to do exactly that for which Judge Rodriguez criticized him in the Second Federal Suit: trumping up federal jurisdiction over state law claims for strategic reasons. Just as in the Second Federal Suit, "plaintiff's complaint is a rambling narrative in excess of forty counts, encompassing civil rights, RICO, and common law claims. However, merely alleging federal violations will not ransform state claims into federal claims . As stated in *Bell v. Hood* 327 U.S 678, 682-683, 66 S.Ct. 773, 90 L.Ed.939 (1946), a claim may be dismissed on jurisdictional grounds where it is immaterial and made soley to attain jurisdiction." *Sutton,* No 91-2694, slip op. at 5-6 (DNJ April 30, 1992). Judge Rodriguez looked through the civil rights and RICO claims and found that plaintiff's case was nothing more than another expression of plaintiff's continuing distress over the accounting of the Estate and the state court's alleged failure to satisfactorily redress his complaints, and Judge Rodriguez dismissed the case for lack of subject matter jurisdiction *id.* at 6.

The instant lawsuit presents the exact same situation. Plaintiff has again attempted to characterize his case as RICO and 1983 claims when the case is nothing more than an attempt to manufacture federal jurisdiction by assembling the claims that have already been asserted and rejected in the Superior Court, or which could have been brought in that court when related disputes arising from these transactions were litigated. Looking through his artful pleading to the substance of the allegations themselves, it is clear that plaintiff continues to express his distress over the accounting and distribution of his father's estate. Plaintiff alleges one problem after another with the legality and propriety of the accounting of the Estate, including alleged wrongful handling of a wrongful death suit, a supposedly fraudulent consent order, and alleged improper approval of the liquor license transfer as a part of the Estate, and he states that defendants' representations to the various courts throughout the years that the accounting was proper constituted fraud perpetrated through the mail system. This is not a RICO claim; it is, once again, an attempt to get federal review of the handling of the Estate in a circumstance where each essential component of the "new" federal claim was previously adjudicated adverse to plaintiff in the courts of New Jersey.

As explained above, the *Rooker/Feldman* doctrine bars this Court's review of adjudicative actions by state courts. *See Whiteford* 155 F3d 671. Here, that doctrine bars this Court's review of handling of the Estate as approved by the Probate Court, both through the consent order settling plaintiff's challenge to the estate (and subsequent decisions not to vacate the consent order, upheld by appeals courts) and the more recent activities related to the sale of the land and the liquor license transfer. The Probate Court's decisions were adjudicative ones, declaring and enforcing liabilities under the law. Any review of those decisions could be handled through the appellate procedures of the New Jersey state courts and , if necessary, through an application for a writ of certiorari with the U.S. Supreme Court. Though the Supreme Court would have appellate jurisdiction pursuant to 28 U.S.C. 1257, this district court does not.

Moreover, the claims in this case are barred by either res judicata or the entire controversy doctrine. In the Law Division action, plaintiff put the accounting of the Estate , including the settlement by consent order, at issue. The Co-Trustees and Philip Perskie were named as defendants in that case, which concerned the same transactions at issue in this fourth Federal Action. The Law Div. reached a final judgment on the merits of that case (which was affirmed by the appellate division) , dismissing certain of the specific claims (unlawful accounting, fraudulent contracting/retaliatory firing, malicious loss of prospective economic advantage, waste, breach of fiduciary duty, malicious interference with a prospective economic advantage, quantum meruit, and corporate opportunity) for failure to state a claim and other claims (wrongful settlement/ conversion and defamation) upon a motion for summary judgment. Thus, because the Law Division action involved the same claim (albeit with very slightly different issues) as the instant suit and resulted in a final judgment on the merits, its decisions dismissing the case act as res judicata upon plaintiff's current claims agains the Co-Trustees and Perskie. *See Watkins* 124 N.J. at 412.

None of the other parties to the instant case were named as defendants in the Law Division Action, and all other claims against the additional defendants were made in lawsuits dismissed for lack of subject matter jurisdiction; thus., none of th prior cases act as res judicata to the claims against these additional defendants

Goldenberg , Shenkman , Seltzer, the Estate, the City of Atlantic City, and the ABC Commissioners). However, as the Appellate Division said when reviewing the Law Division's dismissal of plaintiff's malpractice claims against George Seltzer in *Sutton v. Seltzer No. A-458-95T2, slip op.* (N.J. Super. Ct. App. Div. June 14, 1996), the Law Division Action against the Co-Trustees , Perskie and others barred later actions against those defendants and others based on the settlement of the Estate under the entire controversy doctrine. *id* at 4. The claims against defendants Goldenberg , Shenkman and Seltzer in the instant lawsuit arise from the same transaction or series of transactions as those at issue in the Law Division, and thus plaintiff, if he was to raise this claims at at all, was required to litigate all of his claims in one action. *See Fornarotto,* 144 F.3d 276. He Failed to do so.

To the extent to which the instant complaint makes claims against the City of Atlantic City and the ABC Commissioners (and other defendants) which are not based on settlement and accounting of the Estate as it existed at the time of the Law Division Action, those claims are barred by the Probate Court's more recent actions with regard to the Estate. The Probate Court reached a final decision the sale price of the land and the transfer of the liquor license, and that decision was affirmed on appeal. Under *Rooker/Feldman* doctrine, this Court is without subject matter jurisdiction to review the state court's ultimate handling of the accounting of the Estate, including transfer of the liquor license. Plaintiff cannot seek review of the Probate Court's handling of the transfer of the license by framing it as a civil rights and RICO claim against individuals or officials who played a part in the transfer of that license pursuant to the Probate Court's jurisdiction and order. Any relief for plaintiff which this Court could grant plaintiff due to the alleged fault of the defendants in the transfer of the liquor license and the sale of the land would necessarily hve the effect of reversing or voiding the Probate Court's decision . The *Rooker/Feldman* doctrine bars this Court from doing just that. If the municipality and the licensing commissionrs could be haled into federal court for their compliance with the directives of a lawful order of the state courts, it would do inestimable damage to our system of federalism and, ultimately, to the rule of law.

This Court finds that plaintiff does not raise any allegation that was not (or could not have been) passed upon by a state court (whether the Law Division or the Probate Court, affirmed through the appellate courts) or that does not involve federal district court review of a state court adjudicative action. Thus, all of his claims are bared by res judicata, the entire controversy doctrine, and the *Rooker/Feldman* doctrine. The entire complaint must be dismissed.

III. *CONCLUSION*

This Court is barred from reviewing plaintiff's allegations as a result of the entire controversy doctrine and the *Rooker/Feldman* doctrine, and plaintiff is barred from bringing many of the claims as a result of res judicata. For all of the foregoing reasons, plaintiff's complaint must be dismissed. The accompanying order is entered.

ORDER

This matter having come before the Court upon defendants' motions to dismiss; and the Court having considered the parties' submissions; and for the reasons expressed in the Opinion of today's date; It Is this day of October 1999 hereby ORDERED that defendants' motions to dismiss be , and hereby are, GRANTED and this action shall be dismissed with prejudice in its entirety.

Costs for defendants.

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UNITED STATE COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 99-5909

ROY F. SUTTON, as beneficiary, a shareholder, and individually
Plaintiff

v.

RONALD W. SUTTON, Co-Trustee, individually and as personal representative of the Estate of Co-Trustee Loretta E. Sutton, et al , Defendants

Roy F. Sutton
Appellant

On Appeal From the United States District Court
For the District of New Jersey
(D.C. Civ. No. 99-cv-00573)
District Judge: Honorable Jerome B. Simandle

Submitted Under Third Circuit LAR 34.1(a)
May 17, 2000

Before: GREENBERG, NYGAARD, AND BARRY , CIRCUIT JUDGES

(Filed: May 18, 2000)

OPINION

Roy F. Sutton filed this pro se action raising claims against the named defendants pursuant to RICO, 42 U.S.C. 1983, and state law. The District Court fully set forth the background of this case in its October 14, 1999 Opinion, and we need not reiterate that history here. See Sutton v. Sutton 71 F. Supp2d 383, 386-389 (D.N.J. 1999). Sutton, in essence, is dissatisfied with the settlement he executed in 1988 in satisfaction of his claim to his father's estate, and he is also dissatisfied with the way in which the state courts have adjudicated various matters pertaining to the estate. The probate Division of the Atlantic County Superior Court entered a consent order in 1988 approving the terms of the settlement, see Appendix 54-60, and Sutton and the estate have since litigated several issues in state court arising out of the disposition of the estate assets.

In the present action, the District Court dismissed Sutton's complaint with prejudice, finding that his state and federal claims were barred by the doctrines of issue and claim preclusion, the New Jersey entire controversy doctrine , and the Rooker-Feldman doctrine. The District Court found that Sutton's complaint "does nothing more than rehash claims that were or could have been made in any of his previous state lawsuits." 71 F. Supp2d at 391. As to the federal claims, the District Court explained as follows:

> Plaintiff has again attempted to characterize his case as RICO and 1983 claims when the case is nothing more than and attempt to manufactue federal jurisdiction by assembling the claims that have already been asserted and rejected in the Superior Court, or which could have been brought in that court when related disputes arising from these transactions were litigated. Looking through his artful pleading to the substance of the allegations themselves, it is clear that plaintiff continues to expresss his distress over the accounting and distribution of his father's estate.. Plaintiff alleges one problem after another with the legality and propriety of the accounting of the Estate including alleged wrongful handling of a wrongful death suit, a supposedly fraudulent consent order, and alleged imnproper approval of the liquor license transfer

> as a part of the Estate, and he states that defendants' representations to the various courts throughout the years that the accounting was proper constituted fraud perpetrated through the filing of false statements in briefs through the mail system. This is not a RICO claim; it is once again, an attempt to get federal review of the handling of the Estate in circumstance where each essential; component of the "new" federal claim was previously adjudicated adverse to plaintiiff in the courts of New Jersey. *id.* 392

Sutton timely filed this appeal. the defendants have indicated that they do not wish to participate on appeal, and the matter is submitted on appellant's brief only.

We have jurisdiction pursuant to 28 U.S.C. 1291. Our review of the District Court's decision to grant the motions to dismiss, which were treated as motions for summary judgment, is plenary. Summary judgment is appropriate only when "there is no genuine issue as to any material fact" and " the moving party is entitled to a judgment as a matter of law" FRCP 56(c).

Having reviewed the record, we will affirm for essentially the reasons explained by Judge Simandle in his thorough October 14, 1999 Opinion. As to the Rooker-Feldman analysis, Sutton claims that the District Court erred and should have exercised jurisdiction, because the probate Court's consent order is "infirm" and " unenforceable." Aplnt Br.at 6-7. The basis for this assertion, however, is simply thae fact that the state courts have enforced the terms of the consent order in a manner that Sutton allegedly never contemplated, and does not like. Sutton's dissatisfaction with the various state court rulings suggest no "infimity" in the judgments regarding the disposition of the estate assets, nor does it support his assertion that the state court rulings are not entitled to "full fith and credit" Moreover, as the District Court fully explained, Sutton's thinly veiled effort to overturn the various state court decisions via litigation in federal district court, must be rejected under Rooker/Feldman. The relief Sutton requests in his federal causes of action (e.g., a "lawful" accounting of the estate, imposition of equitable liens on estate property, disbursements from the

estate, restoration of his share of the liquor license sold by the estate pursuant to a court-approved sale, see Appendix at 30, 32, 35-36) "would effectively reverse the state decision[s] or void [their] ruling[s]." Whitefor v. Reed 155 F.3d 671, 674 (3rd Cir 1998). Thus , the District Court's application of Rooker/Feldman was correct.

We have considered the remaining contentions raised in Sutton's appellate brief, and find them to be without merit. We will affirm the District Court's judgment.

STATUTORY PROVISIONS

United States Constitution

Amendment V : No person shall .....be deprived of Life , Liberty , or property without due process of law; .....

Amendment XIV , Section 1 : .....No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States ; nor shall any State deprive any person of Life , Liberty , or Property , without due process of law ; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Code

Title 18 U.S.C.A 218 , Voiding transactions in violation of chapter ; recovery by United States : In addition to any other remedies provided by law the President or under regulations prescribed by him , the head of any department or agency involved , may declare void and recind any contra ct , loan , grant , subsidy, license , right , permit , franchise , use , authority , privilege , benefit , certificate , ruling , decision , opinion .....in relation to which there has been a final conviction for any violation of this chapter , and the United States shall be entitled to recover in addition to any penalty prescribed by law or in a contract the amount expended or the thing transferred or delivered on its behalf, or the reasonable value thereof. (in relevant part)

Title 18 Section 1963(b) , Criminal Penalties : In any action brought by the United States under this section, the district courts of the United States **shall** (*emphasis added)* have jurisdiction to enter such restraining orders , or to take such other actions, including.....(in relevant part) .

Title 18 U.S.C.A 1964 (a) : The district court of the United States **shall** (*emphasis added*) have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders , ...making dur provbisions for the rights of innocent persons .(in relevant part)

Title 18 U.S.C.A. 1964 (b) : The Attorney General may institute proceedings under this section. In any action brought by the United States under this section, the Court shall proceed as soon as practicable to the hearing and determination thereof. pending final determination thereof, the Court may at any time enter such restraining orders or prohibitions, or take such other actions , including the acceptance of satisfactory performance bonds, as it shall deem proper .

Title 18 U.S.C.A. 1964 (c) : Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit , including reasonable attorney's fee .

Title 18 U.S.C.A. 1964 (d) : A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States .

Title 42 U.S.C.A. 1983 : Every person who, under color of any statute, ordinance, regulation , custom or usuage of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws , shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the to the District of Columbia shall be construed to be a statute of the District of Columbia.

Title 42 U.S.C.A 1985 (2) : **Obstructing Justice Intimidating Party Witness , or Juror;** If two or more persons in any State or Territory conspire to deter, by force , intimidation , or threat , any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely ; fully , and truthfully , or to injure such party or witness in his person or property on account of his having so attended or testified, ...(in relevant part)